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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In The Matter of the Application of SAN
DIEGO GAS & ELECTRIC COMPANY
(U902E) for a Permit to Construct The Tie
Line (TL) 6975 San Marcos to Escondido
Project

Application 17-11-010
(Filed November 15, 2017)

**CITY OF SAN MARCOS' COMMENTS ON THE PROPOSED DECISION
GRANTING SAN DIEGO GAS AND ELECTRIC COMPANY A PERMIT TO
CONSTRUCT THE TIE LINE 6975 SAN MARCOS TO ESCONDIDO PROJECT,
ISSUED AUGUST 5, 2020**

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SUMMARY OF RECOMMENDATIONS

The City of San Marcos respectfully requests that the California Public Utilities Commission take the following actions with respect to pending application by San Diego Gas & Electric:

A. Preparation and Circulation of an Environmental Impact Report

The City of San Marcos contends that the Final IS/Mitigated Negative Declaration (January 10, 2020) prepared with respect to Cal. Public Utilities Comm. Application No. A17-11-010 for the Tie Line 6975 San Marcos to Escondido Project does not comply with the California Environmental Quality Act, as the impacts of the proposed Tie Line 6975 San Marcos to Escondido Project and significant potential environmental impacts on City of San Marcos residents, public property, and the public in general have not yet been sufficiently identified, evaluated, and/or addressed. The City of San Marcos recommends that the California Public Utilities Commission, as the lead agency for the Tie Line 6975 San Marcos to Escondido Project, cause the preparation and circulation of an Environmental Impact Report to fully evaluate the Tie Line 6975 San Marcos to Escondido Project's environmental impacts and to ensure that the proper mitigation measures are in effect, including an evaluation of potential undergrounding of all or part of the utility lines comprising the Tie Line 6975 San Marcos to Escondido Project. Absent preparation and circulation of an Environmental Impact Report, the City of San Marcos recommends San Diego Gas & Electric's Permit Application for the Tie Line 6975 San Marcos to Escondido Project be denied.

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Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the City of San Marcos (“City”) submits the following comments on the Proposed Decision Granting San Diego Gas & Electric Company’s request for a permit to construct the Tie Line 6975 San Marcos to Escondido project (“Project”) issued in the above captioned proceeding on August 5, 2020 (“Proposed Decision” or “PD”).

I. INTRODUCTION.

The PD, which grants the application of San Diego Gas & Electric Company (“SDG&E”) for a permit to construct the Project, was issued in the above captioned proceeding on August 5, 2020. As discussed below, the PD’s evaluation and determination that the Final Initial Study/Mitigated Negative Declaration (“MND”) complies with the California Environmental Quality Act (“CEQA”) is legally unsound. The MND is not the proper environmental review document for the Project; substantial evidence in the record supports a fair argument that the Project may have a significant impact on the environment, and the preparation of an Environmental Impact Report (“EIR”) is necessary. Further, the PD does not provide any justification for its conclusory acceptance of (i) the inadequate wildfire risk analysis, (ii) insufficient noise impact analysis, and (iii) incomplete cumulative visual impact analysis conducted in the MND. Each of these analyses rely on conclusory

statements, and are unsupported by expert opinion and/or evaluation, therefore, a fair argument remains that Project may create significant impacts to the environment. Accordingly, the City respectfully requests that the Commission refrain from accepting and adopting the PD, and that it order the preparation of an EIR for the Project so that the potential significant impacts can be properly evaluated and considered.

II. THE MND DOES NOT COMPLY WITH CEQA

A. *The MND is Inadequate and an EIR is Necessary.*

To issue a permit to construct (“PTC”) pursuant to General Order (“GO”) 131-D, the Commission must find that the Project complies with CEQA. The City contends that the MND for the Project does not comply with CEQA as the Project may cause significant negative environmental impacts on City residents, public property and the public in general. Under the existing MND, the Project will have significant negative adverse environmental impacts that have not yet been evaluated and/or appropriately mitigated.

Pursuant to CEQA Guidelines section 15369.5, a MND is “prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) **there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.**” (Cal. Code Regs., tit. 14, § 15369.5; emphasis added; see also, Pub. Resources Code, § 21064.5.) Public Resources Code section 21080(e)(1) defines substantial evidence as evidence that “includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.” (Pub. Resources Code, § 21080(e)(1).) Section 21080(e)(2) goes on to explain that substantial evidence “is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or

erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.” (Pub. Resources Code, § 21080(e)(2).)

A MND may be adopted **only** if all potentially significant effects of a project will be avoided, or reduced to insignificance. (Pub. Resources Code, § 21080(c)(2); Cal. Code Regs., tit. 14, § 15070(b).) An EIR must be prepared, and certified, for a project that “may have a significant effect on the environment¹.” (Pub. Resources Code, § 21080(d).) Public Resources Code, section 21060.5, defines “Environment” as “the physical conditions which exist within the area which will be affected by a proposed project, **including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance.**” (Pub. Resources Code, § 21060.5; emphasis added.) And as set forth herein, the Project will have a significant effect on the environment, warranting an EIR.

B. Fair Argument Standard of Review Applies to the Commission’s Determination to Rely on the MND.

The PD has summarily determined, without critical review or evaluation, that the MND was completed in compliance with CEQA requirements. (PD p.13.) With respect to interpretation of the Public Utilities Code and related regulations, the City acknowledges that the Courts “give presumptive value to a public agency’s interpretation of a statute within its administrative jurisdiction because the agency may have ‘special familiarity with satellite legal and regulatory issues,’ leading to expertise expressed in its interpretation of the statute.” (*Pacific Gas & Electric Co. v. Public Utilities Com.* (2015) 237 Cal.App.4th 812, 839.)

However, the question of “[w]hether judicial deference to an agency’s interpretation is appropriate and, if so, its extent — the “weight” it should be given — is ... fundamentally

¹ An EIR is an informational document identifying significant impacts of a project, mitigation measures, and alternatives for decision-makers, other agencies, and the public. (*Vineyard Area Citizens for Responsible Growth v City of Rancho Cordova* (2007) 40 Cal.4th 412; *In re Bay-Delta Programmatic Env’tl Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1162; *No Oil, Inc. v City of Los Angeles* (1974) 13 Cal.3d 68.)

situational.” (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 12; emphasis in document.) “(CEQA) and the regulations implementing it (Cal. Code Regs., tit. 14, § 15000 et seq.) embody **California's strong public policy of protecting the environment.**” (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285; emphasis added.) “The basic purposes of CEQA are to: (1) Inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities. (2) Identify ways that environmental damage can be avoided or significantly reduced. (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible. (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.” (*Ibid*, quoting Cal. Code Regs., tit. 14, § 15002; see also, *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382.) None of these purposes are met by the current MND and associated documents.

The effectuation of valid public goals such as protection of the environment, safety, and aesthetics, is distinct from – and does not interfere with – the Commission’s administration of public utilities. (see, *Sprint Telephony PCS, L.P. v. County of San Diego* (9th Cir. 2008) 543 F.3d 571, 580.) Therefore, the Commission’s “decision to rely on a negative declaration or a mitigated negative declaration **under CEQA** ‘is reviewed for **abuse of discretion under the “fair argument” standard.**’” (*Save the Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 675 [reh’g denied (Apr. 10, 2020)] (referred to herein as *City of Agoura Hills*); emphasis added.) As discussed above, CEQA limits use of a MND to scenarios in which “there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Pub. Resources Code, § 21064.5.)

Moreover, “if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency *shall* prepare an EIR even though it

may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68 [118 Cal.Rptr. 34, 529 P.2d 66]).” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935.) Both CEQA Guidelines section 15300.2(c) and Public Resources Code section 21151 call **“on the agency to determine whether the record reflects a *reasonable possibility* of a significant effect rather than to make findings and weigh evidence to determine if there *will be* a significant effect.”** (*Banker’s Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 265; emphasis in document and added.)

“The fair argument standard thus creates a **low threshold** for requiring an EIR, reflecting the legislative preference for resolving doubts in favor of environmental review.” (*City of Agoura Hills*, *supra*, (2020) 46 Cal.App.5th at p. 676; emphasis added.) As described by the *City of Agoura Hills* Court,

[A] reviewing court may not uphold an agency’s decision [not to prepare an initial EIR under the fair argument test] ‘merely because substantial evidence was presented that the project would not have [a significant environmental] impact. **The [reviewing] court’s function is to determine whether substantial evidence support[s] the agency’s conclusion as to whether the prescribed “fair argument” could be made. If there [is] substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it [can] be “fairly argued” that the project might have a significant environmental impact. Stated another way, if the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency’s action is to be set aside because the agency abused its discretion by failing to proceed “in a manner required by law.”** (*Ibid*; quoting *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1112; emphasis added.)

The inquiry of the reviewing court “shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.” (Pub. Resources Code, § 21168.5.) The City believes the California Supreme Court would determine that the MND for the Project is neither adequate nor appropriate under the circumstances, and that the Commission should exercise its discretion to require the preparation of an EIR. (see, Pub. Resources Code, § 21168.6.)

C. Increase in Likelihood of Fire is a Significant Impact.

The information provided by Project opponents has raised a fair argument that the Project will cause a significant impact to the environment with respect to wildfire risk. In Segment 3 of the Project, which involves 7.4 miles of power lines between the Meadowlark substation and the Escondido substation, SDG&E has stated it will reconductor and energize a current deenergized 138 kV line that crosses San Elijo Road in the City. (MND p. 2-9.) By energizing a deenergized line, the Project is introducing a new ignition source as compared to existing conditions, which was not evaluated. The threshold for the Project to exacerbate wildfire risk under CEQA is “if it were to increase the likelihood of wildfire, such as by introducing a new or more likely ignition source compared to existing conditions, and/or if it were to cause some change in the environment that would increase the environmental or human health consequences of a wildfire, such as by introducing an impediment to safe evacuation or by introducing a source of pollutants that may be released by a wildfire.” (MND p. 2-8.) The new reconducted line may be a lower voltage of 69 kV; however, 69 kV is still a new ignition source if the line is currently deenergized with no voltage. This introduction of a new ignition source exceeds the threshold to exacerbate wildfire risk under CEQA, and is therefore a potentially significant impact to the environment that has not been evaluated, let alone mitigated. Additionally, the area surrounding the Project is now densely populated, which was not the case when the existing poles were installed, which constitutes a physical change to the environment under which

the Project is to be undertaken; the new ignition source and significantly changed physical conditions should be evaluated rather than ignored.

This location on San Elijo Road is one of only four safe evacuation routes out of the densely populated San Elijo community. Where there was previously no risk of energized power lines falling over the road, the Project will now introduce an impediment to safe evacuation. Evacuation in this area is already difficult and potential fallen energized power lines, and/or any crews sent out by SDG&E to address any issues that may have arisen or which may arise with respect to the power lines, would compete with first responders and with emergency personnel, further complicating the ability of residents to evacuate. The MND has not evaluated the impact of downed power lines or fallen poles, or any other maintenance or safety issues which may cause the need for and/or which may make safe evacuation of this area more difficult. In addition to the introduction of an ignition source and/or activities that SDG&E may need to undertake with respect to fire or other emergency actions that could affect the power lines which constitute the Project, and/or routine maintenance activities that may be occurring at the time of a life safety emergency, construction of the Project itself could be an impediment to safe evacuation in the event of a fire safety or other event which may occur during that time period.

The MND does not adequately identify and/or analyze the potential impacts that large vehicles and heavy equipment may have on evacuation routes in the event a wildfire incident occurs during construction and/or maintenance activities. The MND provides an APM (“Applicant Proposed Measure”) for SDG&E to coordinate with local emergency response agencies during construction, but this APM does not provide a thorough plan or evaluation to specifically address evacuation from the San Elijo community. A MND can only be prepared when there is no substantial evidence that the project may have a significant effect on the environment. (Cal. Code Regs., tit. 14, §15070.) The PD’s statement that the MND is in compliance with CEQA cannot stand unless this potentially significant impact to the

environment has been evaluated and, if necessary, adequately mitigated to a level below significance.

D. Mitigation Measures Are Not Sufficient for Noise Impacts.

For noise impacts, the proposed mitigation measures set forth in the MND will not reduce all project-related environmental impacts to less than significant levels, necessitating preparation of an EIR. The City of San Marcos City Council Resolution 2002-5865 requires nighttime construction when construction would involve a lane closure on San Marcos Boulevard. There is no evaluation or substantial evidence in the MND that impacts from nighttime construction have been reduced to levels below significance. As stated in the MND, nighttime “construction noise could constitute a substantial temporary increase in ambient noise levels in the Project vicinity.” (MND 2-65.) The MND states that it will address the significant impacts of noise on the environment through Mitigation Measure NOI-1. The Measure states, “This mitigation measure would apply to all construction activities within 100 feet of sensitive receptors, including nighttime construction, and requires noise reduction, notification to affected residences and correction of noise exceedances, and if needed, temporary relocation of residents if construction noise cannot be reduced to 75 dBA Leq² or below for affected residences. It assumes, rather than providing evidence supporting the conclusion, that this mitigation measure would reduce nighttime construction noise impacts on sensitive receptors, including those along West San Marcos Boulevard, to a less-than-significant level by either reducing noise to below the significance threshold or temporarily relocating residents away from noise exceedances.

Temporarily relocating residents is neither a feasible nor a viable mitigation measure for the elderly communities and other vulnerable members of the population that live in the affected areas, or frankly any of the densely populated area. There is no evaluation of the efficacy of the potential measure, which appears to have simply been tossed into the mix, or suggestion of a structure or a plan for such a relocation, other than to say that one would be

² The highest level of construction noise allowed for safety purposes per the MND.

prepared fourteen (14) days before construction commences. That is insufficient to constitute a mitigation measure, and impermissibly delays and defers the work of evaluating the efficacy of the plan until after construction commences. The mitigation measure should discuss the impacts to residents who cannot be relocated, potential mitigation for that impact, and should also provide sufficient information to allow an appropriate evaluation of the feasibility of potentially relocating scores of area residents. As noted above, the area surrounding the Project is densely populated, and impacts on those existing residents with respect to this proposed mitigation measure have not been adequately identified or evaluated.

The MND states that SDG&E must develop and submit a Construction Noise Reduction and Mitigation Plan to the Commission at least fourteen (14) days prior to commencement of construction to reduce noise impacts due to Project construction near sensitive receptors. (MND p. 4-20.) This Mitigation Plan does not ensure that City residents will not be subjected to noise levels above 75 dBA Leq, and there is no indication the City will have an opportunity to review this plan to ensure its residents are not impacted by noise from the Project. The MND is improperly deferring analysis of noise impacts until after the project is approved. As stated above, a MND is “prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant **before** the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur...” (Cal. Code Regs., tit. 14, § 15369.5; emphasis added; see also, Pub. Resources Code, § 21064.5.) “The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306.) This Construction Noise Reduction and Mitigation Plan would be submitted to the Commission after the MND is adopted, contrary to the need to ensure any potential impacts are mitigated to a level below significance prior to adoption of the MND. Therefore, it cannot be

determined whether noise may be a significant and unavoidable impact to these residents. An EIR must be completed to consider actual viable alternatives to these significant impacts from noise.

E. The MND Contains an Improper Analysis of Visual Impacts.

The MND for the Project also fails to support a conclusion that all significant impacts will be avoided or reduced, because it fails to provide the City or the public with sufficient baseline information to determine the aesthetic, visual and other impacts that the Project creates. (see, *T-Mobile West LLC v. City and County of San Francisco* (2019) 6 Cal.5th 1107, 1116 [considerations associated with placement of power lines are within a city's police power and authority].)

With respect to aesthetics, the MND fails to show that a thorough visual analysis was conducted or, for that matter, that any visual analysis was conducted. The MND does not properly analyze the cumulative impacts of SDG&E's numerous power lines (both existing and proposed). (Cal. Code Regs, tit. 14, § 15355 [“Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.”].) The Project proposes new poles to carry the power lines in Segment 2. In 2009, SDG&E, in its Shadowridge Transmission Enhancement Project (“Transmission Enhancement Project”), proposed to replace approximately 60 wood poles and one steel lattice tower with new poles that were an average of 25 feet higher (averaging approximately 84 feet tall) than the existing double-pole wood H-frame structures and single wood poles being replaced (averaging approximately 59 feet tall). (Commission Resolution E-4245 (2009).) In Resolution E-4245, protests opposing the construction argued that the construction of additional powerlines will have a significant impact on scenic views and the existing visual character and quality of the sites and surroundings. SDG&E argued that according to CEQA aesthetic criteria, the proposed project did not meet the thresholds that indicate significant impact and it would result in a small incremental aesthetic change, and would not substantially impact the visual quality of

the site. The Commission found that the incremental nature of the proposed power lines in the established right-of-way would not result in a potentially significant aesthetic impact as defined by CEQA Guidelines.

Such an analysis uses the prohibited “de minimis” approach, which undermines the cumulative impact analysis, thus violating established CEQA laws and requirements. (*Berkeley Hillside Preservation v. City of Berkeley*, supra, (2015) 60 Cal.4th at p. 1109 fn.3.; see, *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117.)

GO 131-D states that no electric public utility can begin construction of any public electric power line facilities without obtaining a permit to construct from the Commission. However, power line facilities or substations which are to be located in an existing franchise, road-widening, setback, easement, or public utility adopted pursuant to law by federal, state, or local agencies for which a final Negative Declaration or EIR finds no significant unavoidable environmental impacts are exempt from this requirement to obtain a Permit to Construct. In 2009, SDG&E’s Transmission Enhancement Project, which replaced existing wooden poles with larger steel poles in the area of Segment 2 of the current Project, relied upon the above provision to be exempt from obtaining a permit to construct.

GO 131-D Section III.B.2. contains exception criteria, which if applicable, do not permit exemptions from the PTC Requirements. Exemptions from the PTC Requirements do not apply when any of the conditions specified in CEQA Guidelines § 15300.2 exist:

- a. There is a reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or
- b. The cumulative impact of successive projects of the same type in the same place, over time, is significant; or

c. There is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (Commission Resolution E-4245 (2009).)

CEQA Guidelines, section 15300.2 (b) is the relevant provision. (Cal. Code Regs., tit. 14, § 15300.2(b).)

The Commission must determine if the cumulative impact of successive and serial projects of the same type in the same place, over time, is significant. (see also, Cal. Code Regs, tit. 14, §§ 15130(a)(b)(1), 15355(a); Pub. Resources Code, § 21083(b).) Resolution E-4245 states that the 2009 Transmission Enhancement Project did not have a significant aesthetic impact even though the replacement poles were 25 feet higher than the existing wooden poles and were constructed of steel tubular galvanized poles. Now, in the pending Project, even more steel galvanized poles are proposed in the same area as the 2009 Shadowridge project. The MND states that the Commission does not have to consider the 2009 Shadowridge steel poles in its visual analysis because CEQA only requires it to compare visual impacts to existing conditions. Therefore, if the final MND for the Project is certified, that would constitute a violation of CEQA as well as GO 131-D, as the Commission would not be considering the cumulative impact of successive projects of the same type in the same place, over time, to be significant.

In the MND, the Commission states,

while the Project would add infrastructure in a corridor already containing similar and larger infrastructure in Segment 2, it would not change the visual characteristics of the area, introduce a new uncharacteristic feature, or block or obscure an existing unobstructed view. Segment 2 would not create a strong visual contrast when compared to the existing, or baseline, views. The analysis, while there may be moderate change to the existing visual environment, the visual characteristics of the area would not change to the extent that a significant impact would be created pursuant to the established methodology used for this analysis. (MND Comments and Responses 2-6.)

Here, reliance is placed on the fact that the 2009 Transmission Enhancement Project installed the existing steel poles to justify its finding of no significant impact. It is disingenuous to ignore the existence of 84-foot steel poles for a cumulative analysis, but then rely on their existence to justify a finding of no significant impact for the current Project. The MND demonstrates that the presence of the existing steel poles and power lines was ignored for the cumulative analysis, in contradiction to CEQA. (Pub. Resources Code, § 21083(b)(2).) It is indeed a cumulative visual impact which is significant, and which must be evaluated.

Furthermore, the key observation points selected for visual analysis in the MND were not representative of the scenic views located throughout the Project area. Rather, the selected viewpoints favored the analysis presented in the MND. More accurate visual simulations are needed; otherwise, the finding to the effect that there will be no significant impact to the visual setting is conclusory and insufficient. Arguments of environmental impacts must be based on substantial evidence. (See, Pub. Resources Code, § 21080(e)(2); *Sundstrom* supra (1988) 202 Cal.App.3d 296, 310; *City of Agoura Hills*, supra, (2020) 46 Cal.App.5th at p. 675.) These selected viewpoints do not provide enough evidence to support a conclusion of minimal environmental impacts. Rather, the Project's impacts, which have now been underscored by way of recent additions, to what remains an insufficient visual analysis, are not mitigable, requiring the preparation of an EIR. (Cal. Code Regs., tit. 14, § 15073.5(d) ["If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided, the lead agency shall prepare a draft EIR and certify a final EIR prior to approving the project. It shall circulate the draft EIR for consultation and review pursuant to Sections 15086 and 15087, and advise reviewers in writing that a proposed negative declaration had previously been circulated for the project."].)

Not only is there a lack of substantial evidence to support the MND's conclusion of minimal environmental impacts, there is substantial evidence of potential significant impacts to the environment. The PD ignores the observations of the numerous residents in the area of the Project who commented on the negative visual impacts of the Project. (MND Chapter 2.) "Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument." (*Pocket Protectors v. City of Sacramento*, supra, (2004) 124 Cal.App.4th at p. 928.) The term substantial evidence does not equate to overwhelming or overpowering evidence. (*Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 152.) As stated above, there is a legislative preference for resolving doubts in favor of environmental review and thus an EIR must be prepared for this Project. (*City of Agoura Hills*, supra, (2020) 46 Cal.App.5th at p.676.)

III. CONCLUSION

As discussed above, the City respectfully requests that the Commission refrain from approving or adopting the PD, and that it order the preparation of an EIR for the Project so that significant impacts can be properly evaluated and considered. By granting the Permit for the Project based on an MND, the PD does not satisfy the fair argument standard because the MND does not provide a proper environmental impact analysis and fails to mitigate the significant environmental impacts the Project will cause.

Dated: August 25, 2020

Respectfully submitted,

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APPENDIX

(Additions and Changes to the Findings of Fact and Conclusion of Law)

Findings of Fact

1. All environmental impacts related to the proposed project are not less than significant or reduced to less-than significant levels, and an environmental impact report must be completed. ~~with incorporation of feasible mitigation measures (see Mitigation Monitoring, Reporting and Compliance Program, Attachment A to this decision).~~
2. ~~The proposed project will have either no significant impacts or less than significant impacts with respect to aesthetics, agriculture and forestry resources, air quality, energy, greenhouse gas emissions, land use and planning, mineral resources, and population and housing.~~
3. ~~With the implementation of the mitigation measures identified in the Mitigation Monitoring, Reporting, and Compliance Plan in the Final IS/MND and attached to this order as Attachment A, potentially significant impacts to biological resources, cultural and tribal resources, hazards and hazardous materials, hydrology and water quality, noise, public service, and recreation, transportation and traffic, utilities and public services, and wildfires will be reduced to less than significant levels.~~
5. The Final IS/MND was not completed in compliance with CEQA requirements.
7. On the basis of the whole record before it (including the Initial Study and all comments received), the Commission finds that there is ~~no~~ substantial evidence that the project may ~~will~~ have a significant effect on the environment and the preparation of an EIR is required.
8. The Final IS/MND does not reflect the Commission's independent judgment and analysis.
9. The Commission's preparation of an MND was not supported by substantial record evidence.

10. The proposed project may have significant impacts with respect to aesthetics and an EIR is required to evaluate these impacts.

11. The proposed project may have significant cumulative impacts with respect to aesthetics and the MND has improperly evaluated these impacts.

12. The proposed project may have a significant impact on wildfire risk and an EIR is required to evaluate these impacts.

13. The proposed project may have a significant impact on noise and the mitigation measures proposed do not sufficiently address these impacts.

14. The proposed project may have significant impacts to biological resources and an EIR is required to evaluate these impacts.

15. The proposed project may have significant impacts to hazards and hazardous materials and an EIR is required to evaluate these impacts.

16. The proposed project may have significant impacts to public service and an EIR is required to evaluate these impacts.

17. The proposed project may have significant impacts to transportation and traffic and an EIR is required to evaluate these impacts.

18. The proposed project may have significant impacts to utilities and public services and an EIR is required to evaluate these impacts.

Conclusions of Law

1. SDG&E should not be granted a permit to construct the TL 6975 project ~~in conformance with mitigation measures attached to this order.~~

2. CEQA requires that, prior to approving the project, the decisionmaking body of the lead agency shall consider the proposed MND together with any comments received during the public review period. The decisionmaking body shall ~~adopted~~ the proposed MND only if it finds on the basis of the whole record before it (including the Initial Study and any

comments received) that there is no substantial evidence that the project will have a significant effect on the environment and that the MND reflects the lead agency's independent judgment and analysis.

3. The Final IS/MND ~~should~~ shall not be adopted by the Commission in this decision because there is a fair argument that the project will have a significant effect on the environment, and the lead agency, exercising its independent judgment and analysis, concludes that the preparation of an environmental impact report is required for the proposed project.